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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 09/853,014 | 05/10/2001 | Peter Schafer | A34196 PCT USA-A | 5113 |
| 7590 | 10/15/2004 | | EXAMINER | |
| Andreas Grubert Baker Botts One Shell Plaza 910 Louisiana St Houston, TX 77002-4995 | | | BUTLER, DOUGLAS C | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3683 | |
| DATE MAILED: 10/15/2004 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|--------------------------------------|-------------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/853,014 | SCHAFFER ET AL. |
| | Examiner Douglas C. Butler | Art Unit 3683 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 13 July 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-24 is/are pending in the application.

4a) Of the above claim(s) 3-11, 15 and 17-24 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-2, 12-14 and 16 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) 1-24 are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

1. An action on the merits of claims 1-2, 12-14, 16 is included in this office action as being readable on the elected species (species A: Fig. 1) with claims 3-11, 15 and 17-24 withdrawn from consideration under 37 CFR 1.142(b) as not being readable on the elected species. Claims 8-11, 20-24 appear drawn to the "clamping device" of Fig. 3. Election was without traverse.

2. The examiner has reviewed all communications in the file. Few details are set forth in the original disclosure as to analyzing data which is only generally alluded to and the components within 1, 2, 3, 8 of elected Fig. 1. Each one of the independent

~~claims 1 and 12 recites among other ^{things} ~~this~~, an adjuster booster which is booster 2 of Figs.~~

1-2. Fig. 3 lacks a booster, i.e., claims 1, 12 are not generic. Also, claims 1 and 12 define the changing of the booster characteristics (which appears to be the booster ratio) as "independent of an activation of a brake pedal force" which contradicts language in dependent claims such as claims 3 and 15 which claim that the booster adjustment is a "function of brake pedal pressure". Variable rate brake booster are conventional.

3. It appears that all references cited in Form PCT/ISA/210 in the corresponding PCT application were category A references. However, PCT/IPEA/409 dated 5-15-2001 appears to indicate that a number of claims lack novelty and/or lack an inventive step. The examiner is attaching a copy of PCT/IPEA/409 and a copy of the translated claims. The examiner has requested a translation of the above "409" STIC within the USPTO and intends to attach a translation with the text next office action, if available.

Should applicant obtain translation independently of the USPTO, a copy of it should be forwarded to the examiner for inclusion in the file. The "409" refers to three different German documents (DE 19607048, DE 19629229, DE 19744112), all of record. DE 19744112 corresponds to US 6186601, made of record on the attached Form PTO-892. DE 19629229 corresponds to US 5924508, made of record on the attached Form PTO-892. Re DE 19607048 which appears to be of significance in the "409", the examiner is unaware of any English equivalent. Thus, the examiner has requested a translation from STIC with the intention to have the translation available as an attachment to the next office action. Based upon the findings, additional new grounds of rejection may be entered.

4. A copy of WO 00/27680 which contains the "210" results is made of record on the attached Form PTO-892.

5. Re the instant claims which address analyzing vehicles dynamics to detect a risk of swerving or skidding of the vehicle and which "enhance" booster braking force to avoid swerve or skid, in many cases, increased braking force results in increased skidding or swerving. Managing skid on swerve typically calls for reduced booster force to reduce swerve or skid. See the purpose and constitution of attached JP 61-202964 to Nakamura.

6. The examiner requests that applicants read column 2, lines 10-31 of Dieringer (6033039) re the dynamic adjustment of a booster before, during and after brake pedal operation. Applicants should study the terms in the document in the context of defining

applicants' contribution so as to avoid claim language subject to a myriad of possible interpretations.

See also the entire disclosure of Kita et al (4512615) re the variable ratio booster 4.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-2, 12-14 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Skinner (3,433,536).

Booster 20 of Fig. 1 of Skinner includes dynamics analyzer at 40 which adjusts or "enhances" booster operation independent of operation of brake pedal 24.

10. Claims 1-2, 12-14, 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Scherer et al (6019440).

Adjustable ratio boosters are conventional based on vehicle dynamics.

11. Claims 1-2, 12-14, 16 are rejected under 35 U.S.C. 102(a) as being anticipated by WO 99/54179 to Eckert et al.

See US 6473681 (not available as a reference) for a translation.

12. Claims 1-2, 12-14, 16 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 513537 to Bernhardt.

Booster 4 is of the variable ratio type enhanced by vehicle dynamics.

13. Claims 12, 14, 16 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 61-202964 to Nakamura.

See The Purpose and Constitution.

14. Claims 1-2, 12-14 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Rockwell (3829171).

Booster 42 is adjusted by dynamic conditions to avoid swerve and skid.

15. Claims 1-2, 12-14 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Yamada et al (6283559).

Booster 44 is adjusted by way of dynamic control/stability control unit 54 independent of operation of brake pedal 48. See the Abstract ("operation predicting col. 2, line 5 15-18, 38-45, part..."), Fig. 1, column 7, lines 10-12 re increased boost pressure, column 10, lines 30-38, etc.

16. While not available as a reference, see the Abstract of Bond, III, et al (6659572). Note the manually adjuster booster of Kobayashi (4640097). See manual adjustment 52.

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17. Any inquiry concerning this communication should be directed to ~~John A~~
~~Exm Butler~~ 308-2575
Richardson at telephone number 703-305-0764.



DOUGLAS C. BUTLER
PRIMARY EXAMINER

10/9/04



Butler/vs
October 4, 2004